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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

Docket No.: B-33152A/GER

Hoke V. BULLARD et al.

APPLICATION NO: 10/644,329

Examiner: Carolyn T. Blake

FILED: August 20, 2003

Group Art Unit: 3724

FOR: Feeding Implement

**MS: APPEAL BRIEF PATENTS**

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

**APPEAL BRIEF (AMENDED)**

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## REAL PARTY IN INTEREST

The real party in interest in this appeal is Gerber Products Company.

## RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences.

## STATUS OF THE CLAIMS

Claims 10-15 are pending in this application, and all of these claims stand rejected. Claims 10-15 are appealed. Claims 1-9 are canceled.

## STATUS OF AMENDMENTS

Amendments to the claims after the mailing of the final rejection have been entered. Claim 10 was amended to change "said transport" to "said transport portion" for clarity.

## SUMMARY OF CLAIMED SUBJECT MATTER

The only independent claim in this appeal is claim 10.

The present invention is directed to a feeding implement **310** shown in Figures 8-11 and described at page 2, lines 25-26 (the first sentence after the Summary of the Invention). The implement has a handle **312**, which is the same as **112** in Figure 1 (page 4, lines 21-37), a transport portion **314** (page 6, line 33 to page 7, line 13), and a mouth guard **315**, which is the same as **115** in Figure 1 (page 5, lines 1-9 and page 7, lines 15-20), connected in-between the transport portion **314** and the handle portion **312**. The transport portion **314** has at least two substantially flat surfaces **322a** and **322b** (page 6, line 33 to page 7, line 13), and each surface **322a** and **322b** has a plurality of grooves **326** (page 7, lines 7-13) located thereon.

There are no means plus function claims under 35 U.S.C. §112, sixth paragraph in this appeal.

## GROUND OF REJECTION TO BE REVIEWED ON APPEAL

U.S. Patent No. 5,711,759 to Smith et al. discloses an oral hygiene device with a handle, a flange, and a head, but Smith '759 does not disclose a head that has at least two substantially flat surfaces with a plurality of grooves located thereon. The claimed invention has a transport portion that has at least two substantially flat surfaces, and each surface has a plurality of grooves located thereon. Can Figures 1-3 or Figure 11 of Smith '759 anticipate claims 10-15 of the invention under 35 U.S.C. §102(b) when Smith '759 does not disclose all of the limitations of the invention?

## ARGUMENT

Claims 10-15 are argued as a group, with independent claim 10 being representative.

ANTICIPATION OF CLAIMS 10-15 BY FIGURES 1-3 OF SMITH '759

It was alleged that Figures 1-3 of Smith '759 anticipated, under 35 U.S.C. §102(b), all of the limitations of claims 10-15. In claim 10 d), the transport portion has at least two substantially flat surfaces, and each substantially flat surface has a plurality of grooves located thereon. In Figures 1-3 of Smith '759, the head member (8) is a curved structure. While the head member (8) can be rectangular in shape (column 4, lines 9-11), there is no disclosure of a plurality of grooves located on a substantially flat surface of the head member (8). Figures 1-3 only show nodules (12, 32, or 40) that extend above the surface of the head member (8).

ANTICIPATION OF THE CLAIMS 10-15 BY FIGURE 11 OF SMITH '759

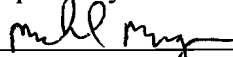
In the Office Action mailed on January 5, 2005, it was alleged that Figure 11 of Smith '759 anticipated the claims under 35 U.S.C. §102(b). In Figure 11 of Smith '759, the article shown by the figure is in cross-section. From the Brief Description of Drawings at column 3, lines 48-50, Figure 11 was intended to be a perspective view. Figure 11, however, is presented as a cross-sectional view as evidenced by the cross-hatching marks and the illustration of the internal liquid flow system. A cross-sectional view only shows what a plane passing through the structure would look like at that specific location. There is no disclosure in Figure 11 as to the overall structure of the head member. An infinite number of structures are possible on either side of the cross-sectional plane. The actual structure of the head member in Figure 11 is therefore indefinite, and it does not disclose the structure of a transport portion having at least two substantially flat surfaces, and each substantially flat surface having a plurality of grooves located thereon.

Because there is no disclosure of a plurality of grooves located on a substantially flat surface, it is respectfully submitted that claims 10-15 are not anticipated by U.S. Patent No. 5,711,759 to Smith et al.

FOR THESE REASONS, Applicants respectfully petition this Honorable Board to reverse the rejection set forth by the Examiner. Should the Board have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

Novartis  
Corporate Intellectual Property  
One Health Plaza, Building 104  
East Hanover, NJ 07936-1080  
(862) 778-1008

Respectfully submitted,

  
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Michael F. Morgan  
Attorney for Applicant  
Reg. No. 42,906  
Date: 6 January 2006

## CLAIMS APPENDIX

### CLAIMS INVOLVED IN THIS APPEAL

Claims 1-9 (canceled)

10. (Previously Presented) A feeding implement, comprising:
  - a) a handle portion shaped to permit grasping by a user;
  - b) a transport portion connected to said handle portion for dipping into solid food;
  - c) a mouth guard connected in between said transport portion and said handle portion; and
  - d) said transport portion having at least two substantially flat surfaces, each substantially flat surface having a plurality of grooves located thereon.
11. (Previously Presented) The feeding implement of Claim 10, wherein said substantially flat surfaces have a concave curvature.
12. (Previously Presented) The feeding implement of Claim 10, wherein said transport portion tapers away from said mouth guard.
13. (Previously Presented) The feeding implement of Claim 10, wherein said handle portion has a plurality of protuberances located thereon.
14. (Previously Presented) The feeding implement of Claim 13, wherein said protuberances are ridges.
15. (Previously Presented) The feeding implement of Claim 10 wherein said mouth guard has at least two points of a perimeter of said mouth guard in contact with a surface when said feeding implement is placed on said surface.

## EVIDENCE APPENDIX

There is no evidence submitted with this Appeal.

## RELATED PROCEEDINGS APPENDIX

There are no other proceedings related to this appeal.